
ACCESS DISPUTE RESOLUTION COMMITTEE

MINUTES of MEETING No. 23 Held on 30th June 1997

Present:

Bryan Driver, Chairman
Tim Clarke (Anglia Railways)
Grahame Cooper (Railtrack)
Dick Fearn (Connex South Eastern)
Nigel Fulford (Great Western Trains)
Gordon Hunt (English Welsh & Scottish Railway)
Geoff Knight (Railtrack)
Michael Woods (Eurostar (U.K.))

In attendance:

Chris Blackman (Secretary)
Martin Shrubsole (Alternate Secretary)

Apologies:

Ian Osborne (Freightliner)

23/0 Introduction

The Chairman welcomed Gordon Hunt who, as Barry Graham's alternate, was attending a meeting of the Committee for the first time.

23/1 Minutes of meeting No.22

Members approved the minutes of the 22nd meeting held on 18th March 1997. The Chairman signed a copy of the amended minutes as a true record of the proceedings.

23/2 Matters arising

22/7: Record of hearing of Reference AD12

Members noted the letter received from Phil White of Virgin Cross Country Trains regarding an inaccuracy in the Record of Hearing of Reference AD12. The Secretary confirmed from his own notes of the meeting that the Record was incorrect. It was agreed that the third sentence of Answer 37 should have the word 'NO' inserted and thus should read, "We claim they have no Firm Contractual Rights."

Action: The Secretary to notify the parties concerned.

22/8: (Minute 20/3) Reference AD10: Snowploughs

Members noted that ScotRail Railways and Railtrack were continuing dialogue on this matter.

22/10: Contract with Legal Advisors

Members noted that the contract with Wragge & Co., the Committee's legal advisers, had now been signed. Some solicitors from the company would be attending hearings of the Committee or its Sub-Committees in order to advance their knowledge and understanding of the procedures and the nature of the disputes.

23/3 Accommodation and equipment update

The Secretary advised members that a meeting on 26th June with Railtrack Property, arranged in order to finalise details of the Committee's tenancy, had been cancelled by the landlord at less than two hours' notice. A date for reconvening the meeting was awaited. Members urged speedy resolution of the outstanding issues, including that of the possible relocation, at the landlord's request, to another part of the second floor of East Side Offices.

23/4 Presentation of Accounts for 1996/97

The Committee approved the Accounts for 1996/97. It was noted that the auditors had, during the previous week, conducted a check of the relevant financial papers supporting the accounts. An initial draft report had been received and the Committee was pleased to note that this was satisfactory.

23/5 Budget for 1997/98

The Committee considered the budget prepared by the Secretary and, after discussion, approved it at £230,000 for the financial year 1997/98.

It was noted that the Secretary would now proceed to calculate the levy on Industry Parties for 1997/98, and, on the basis of the Accounts for 1996/97, to assess the rebate in accordance with Rule A3.9.3. Members asked the Secretary to ensure that a suitable explanatory note concerning the basis of calculation should accompany the invoice to each Industry Party.

Action: Secretary

23/6 The Regulator's judgment on the Appeal by South Wales & West Railway against Timetabling Committee Determination No.32

The Alternate Secretary was thanked for his paper analysing the Regulator's judgment on the appeal by South Wales & West Railway. It was noted that the Regulator was not expressing criticism of the Timetabling Committee's Determination No.32, however he has signified a position in relation to the interpretation of Rights which will be of interest to the Industry.

The Regulator's decision was seen to be generally helpful in giving guidance to the Industry, and indirectly to the Committee, on how rights might be interpreted from the contracts in a constructive rather than a constraining or restrictive way. However the Committee was concerned lest this might be seen to be permitting a free-for-all.

The Regulator's decision will refocus attention on the essential meaning of Firm Contractual Rights, which relate principally to Quantum. Elements of service quality may be viewed as Contingent Rights; subject to the Decision Criteria they can be varied provided there is proper quantum and no other Firm Contractual Right is infringed.

The Regulator's decision should be seen as wholly to the benefit of the industry, and furthermore the Committees need feel no embarrassment that the matter was appealed to the Regulator.

Members agreed to endorse the paper from the Secretariat, and instructed that the paper should be circulated to members of the Timetabling Committee for them to review and discuss at their next meeting.

Action: Secretary

23/7 Appointment of a clerk to the Committee

The Committee accepted the paper from the Secretary, and agreed that the Committees would benefit from the appointment of a clerk to perform the duties identified. The Committee declared that it would contract direct for the provision of the services of a clerk, and that there was no objection to a clerk having connections with an Industry Party as the clerk did not have a judicial role in proceedings. However any interests should be properly declared, and it was recognised that in extreme circumstances it might be appropriate for the clerk to cease to take part in a discussion.

The general terms of appointment were agreed as being analogous to those of the Committee Secretary as prescribed in Dispute Resolution Rules A3.7 and A3.8. The Committee agreed the basis of remuneration and general provision for payment of allowances and expenses. Limitation of liability would require to be provided by means of an amplification to Rule A9.

Finally the Committee noted and supported the Chairman's proposal to appoint Martin Shrubsole to the post of clerk to the Committee, subject to agreement of contractual terms. In the meantime British Railways Board had agreed that Martin Shrubsole could continue to be seconded on an as required daily basis.

23/8 Centre for Dispute Resolution

The Committee accepted the paper from the Secretary. Members agreed that the Committee should apply to become a member of CEDR, the Centre for Dispute Resolution.

It was noted that such membership would confer benefits of a 5% reduction in mediation fees to any Industry Party wishing to use the service which CEDR provided.

Action: Secretary

23/9 Retention of archive material

The Chairman referred to an exchange of correspondence with the Company Secretary of the British Railways Board in which it had been suggested that the Committee might become the custodian of the BRB's archives on matters relating to Track Access. The BRB had accepted the proposition and indicated it would pass papers to the Committee as and when electronic imaging of the papers had taken place, a process expected to be complete by November 1997.

The Committee, affirming that it acknowledged that ownership of the documents rested with the B.R.B., agreed to proceed with the arrangements.

Action: Secretary

23/10 Any Other Business

It was noted that a very lengthy reference had been received from Connex South Central, and that the Secretariat would be examining this in order to establish the correct locus for hearing aspects of the dispute. If necessary, when the Secretariat had considered the documents and clarified points as appropriate with the parties, the Committee would meet to discuss the question of locus and the procedural arrangements.

Action: Secretariat

23/11 Date of next meeting

Tuesday 9th September 1997 commencing at 10.00 in Room 230, East Side Offices at Kings Cross. Additional meetings in the interim might be required if there are any references of a dispute to be heard.